

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,
Petitioner,

v.

JOSEPH P. BUTLER,
Respondent.

M.B.D. No. 12-mc-91200-WGY

**REPORT AND RECOMMENDATION
ON THE UNITED STATES' PETITION FOR AN ORDER
ENFORCING AN INTERNAL REVENUE SERVICE SUMMONS**

Boal, M.J.

On July 16, 2012, the District Court referred the subject petition to enforce an Internal Revenue Service ("IRS") Summons to the undersigned for a hearing and the issuance of a report and recommendation.

On August 2, 2012, the Court issued an order to show cause and scheduled a hearing for November 7, 2012. Docket No. 5. On November 6, 2012, the government filed a motion to continue the hearing, which the Court allowed. Docket Nos. 7-8. The hearing was rescheduled for December 12, 2012. Docket No. 9. On December 11, 2012, the government filed a status report stating that Respondent was unable to attend the hearing and requested a continuance. Docket No. 12. The Court continued the hearing until January 9, 2013. Docket No. 13.

The Court held a hearing on January 9, 2013. The Respondent appeared and represented that he was attempting to comply with the Summons, but needed additional time to do so. The government represented to the Court that although Respondent has been cooperative, it had yet to receive any documents responsive to the Summons.

Respondent has failed to show any cause why he should not obey the Summons issued to him on March 6, 2012. This Court finds that, based upon the Declaration of Revenue Officer John Disher (Docket No. 2), the United States has established a valid basis for issuance of an Order enforcing the Internal Revenue Service Summons, in accordance with 26 U.S.C. §§ 7402(b), 7602 & 7604(a) and United States v. Powell, 379 U.S. 48, 85 S. Ct. 248, 13 L. Ed. 2d 112 (1964).

This Court therefore RECOMMENDS that the Amended Petition of the United States for an Order Enforcing Internal Revenue Summons (Docket No. 4) be GRANTED, and that an Order issue, directing that Respondent obey the Summons within sixty days, upon pain of a finding of contempt of court.

Any objections to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of receipt of the Report and Recommendation to which objection is made and accompanied by the basis for such objection. Any party may respond to another party's objections within fourteen days after service of the objections. Failure to file objections within the specified time waives the right to appeal the order. See Phinney v. Wentworth Douglas Hospital, 199 F.3d 1 (1st Cir. 1999); Sunview Condo. Ass'n v. Flexel Int'l, Ltd., 116 F.3d 962 (1st Cir. 1997); Pagano v. Frank, 983 F.2d 343 (1st Cir.1993).

Date: January 17, 2013

/s/ Jennifer C. Boal
JENNIFER C. BOAL
United States Magistrate Judge